24 April 2020

The Hon Peter Quinlan
Chief Justice of Western Australia
Chief Justice's Chambers
Supreme Court of Western Australia

By email: chief.justice.chambers@justice.wa.gov.au

His Hon Kevin Sleight
Chief Judge of the District Court of Western Australia
Chief Judge's Chambers
District Court of Western Australia

By email: chief.judge.dcchambers@justice.wa.gov.au

Dear Chief Justice and Chief Judge

LODGMENT OF AMENDED PLEADINGS AND TRACK CHANGES

The purpose of this letter is to enquire whether eCourts can be adapted to permit:

(a)   the lodgment of amended pleadings in PDF format (with amendments shown in the usual way by strike out or underline); or

(b)   the lodgment of an amended pleading in Word which retains tracked changes in the conversion to PDF.

If it would assist the Courts, the change could be implemented together with a requirement that a Word version also be provided to the Court by email (in the case of PDF lodgment).

The Law Society of Western Australia considers that either change would significantly promote greater efficiency and reduced cost for parties.

The issue

1.   The issue affecting practitioners arises because:

(a)   practitioners and counsel commonly amend pleadings in Word using the Word Track Changes functionality (see paragraph 3(a) below);

(b)   eCourts only permits pleadings to be uploaded in Word (.doc or .docx) (although other documents, such as affidavits, may be uploaded in PDF);

(c)   once uploaded to eCourts, the Word file is converted to PDF; and

(d)   if a practitioner attempts to upload a Word document with amendments marked using Word's Track Changes feature, the document is not uploaded

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and an error message is displayed stating "the attachment cannot contain tracked changes".

2. As a matter of practice, practitioners avoid this issue by uploading amended pleadings in Word with amendments shown in manual tracking. eCourts' PDF conversion retains manual tracking in the document so that amendments remain clearly marked. However, the process is time-consuming, inefficient and increases the chance of human error, particularly since the document being amended will have automatic paragraph numbering (all of which may need to be manually amended if paragraphs are added or deleted).

3. The difference between using Word's Track Changes and manual changes is as follows:

    (a)   Track Changes is a setting in Word which can be activated or deactivated. When activated, all changes to a document are automatically shown in underline or strike out (as the case may be) as they are typed, and paragraph numbering changes happen automatically as paragraphs are added or deleted;

    (b)   Manual changes involve manually formatting text to show it as a deletion, addition or other change. The process is not automatic. The typist must manually select the desired text format (underline or strike out) for each change. If numbered paragraphs are added or deleted, all consequential paragraph numbering changes must also be made manually (including cross-references).

4. Examples of the differences are set out in Annexure A.

5. As a matter of practice, practitioners and counsel will often draft amendments using Track Changes. Track Changes are particularly useful where a document is being reviewed multiple times (by practitioners, counsel and clients).

6. Currently, settled amendments must then be manually formatted for the purpose of eCourts lodgment. For lengthy pleadings or substantive amendments, this can be a time-consuming and intricate process. It increases the chance of typographical errors or other human errors.

The Law Society would be grateful to hear from your Honours as to whether eCourts can accommodate the requested change.

Yours sincerely

Nicholas van Hattem
President

Annexure A

	Automatic Tracking	Manual Tracking
Text deletions	Select text to be deleted, press delete or back space and strikethrough is automatically applied	Select text to be deleted and format font to strike through
Text additions	Start typing and the new text is automatically underlined	Select where you want text to be added Before typing text, set font formatting to underline
New paragraph	Once you press enter, the new paragraph will automatically have correct numbering with underlining and all consequent paragraph numbering changes will automatically shown in strike through/underline. Cross-references will automatically update.	1. Manually number new paragraph 2. Format font in new paragraph to underline 3. Manually type consequential paragraph numbering changes 4. Manually type changes to cross-references.
Deleting a paragraph	The deletion is automatically shown as strike through and all consequent paragraph numbering changes are automatically shown in strike through/underline. Cross-references will automatically update.	1. Format deleted paragraph with strike through 2. Manually type consequential paragraph numbering changes 3. Manually type changes to cross-references.